
In the United States Bankruptcy Court
for the
Southern District of Georgia
Brunswick Division

In the matter of:)	
HMH MOTOR SERVICE, INC.)	Chapter 11 Case
)	Number <u>89-20232</u>
<i>Debtor</i>)	

ORDER ON DEBTOR'S REQUEST FOR HEARING
AND CLAIMANT'S MOTION TO AMEND JUDGMENT

By Order dated September 6, 1990, filed September 13, 1990, I ruled that Klausner Transportation Company, Inc., was entitled to an unsecured claim in this case in the amount of \$1,189,167.00. I left the record open for limited purposes as set forth in that Order. Both parties filed motions in the nature of Motions to Reconsider and, as ordered, have supplemented the record by affidavits filed on January 8, 1991, and January 25, 1991.

After consideration of the Motions and the supplemental affidavits I make the following findings.

I. The Klausner Motion

I originally ruled that Debtor was entitled to a reduction of \$158,351.00 of the Klausner claim based on the evidence that that sum had been paid by the Debtor, pursuant to the terms of the note and agreement. Debtor's supplemental evidence asserts total payments of \$356,632.72 (Brewer Affidavit paragraph 10). Klausner acknowledges receipt of all but \$41,008.10 of that sum,

the difference being a check issued by Debtor which was never honored, due to a stop payment order (Wallace Affidavit paragraph 11 and Exhibit F). I therefore conclude that the correct credit for sums paid by Debtor should be as follows:

Total payments tendered	\$356,632.72
Less amounts not honored	41,008.10
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Subtotal	\$315,624.62
Less amount credited in prior order	\$158,351.00
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Additional reduction in claim	<u><u>\$157,273.62</u></u>

Klausner also asserts that my previous order failed to recognize that the reduction of the purchase price stated in the contract of \$2,500,000.00 represented by the promissory note which was executed for \$2,275,000.00 occurred because the parties estimated the authorized reductions of Section 2(c)(1) and (2) of the agreement to be \$225,000.00. Thus Klausner asserts that when I reduced the \$2,275,000.00 by an additional \$132,271.00 and \$80,335.00 for Section 2(c)(1) and (2) items it constituted a double deduction. The Wallace affidavit is uncontradicted on this point and does establish (for the first time I must observe) that the parties reduced the note in an effort to at least partially comply with their obligations to arrive at the correct adjusted selling price. Klausner is indeed correct that it should not be charged twice for the same deductions. I therefore conclude that the \$2,275,000.00 took into account the Section 2(c)(1) and (2) reductions agreed on by the parties and the further reduction I previously ordered of \$212,606.00 should be reversed. The claim is therefore increased by said amount.

II. The HMM Motion

HMM seeks reconsideration on numerous grounds. In part the Brewer affidavit (Paragraphs 6, 7 and 8) reasserts previous contentions that certain assets were never received by the debtor or that the value of assets were overstated. This evidence is no different than that which I previously concluded in pages 6-9 of my previous order was insufficient to cause any reduction in the purchase price and the Brewer affidavit does not change my conclusion as stated therein. Paragraph 9 of the Brewer affidavit sets forth undisclosed liabilities of Klausner which were not revealed. However, the transaction was a pure asset purchase and since no liabilities were assumed except debts on rolling stock I rule this evidence (sketchy as it is) neither results in a reduction of the purchase price under any term of the agreement nor has been timely submitted to arbitration as required by the agreement (see pages 8-11 of my prior order). Finally in paragraphs 16 and 17 of the Brewer affidavit it is asserted that the sole reason for the asset purchase was that Klausner had substantial clients that Debtor expected to "inherit" and that Debtor failed to retain the business due to misconduct by Klausner or its employees. As reprehensible as such conduct might be I find no mention of the retention of such business in the contract of sale nor do I see any non-compete language in it which would make such allegations actionable, even if true. Accordingly, I conclude that no basis for an additional reduction is stated.

For the foregoing reasons the Klausner claim as established by my prior order is adjusted as follows:

Previously allowed claim	\$1,189,167.00
Less addition reduction for payments made by Debtor	\$ 157,273.62
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Subtotal	\$1,031,893.40
Plus duplicate §2(c)(1)&(2)	

amounts previously deducted \$ 212,606.00

\$1,244,499.40

Accordingly, Klausner Transportation Company, Inc., is allowed an unsecured claim
of \$1,244,499.40

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This __ day of June, 1991.